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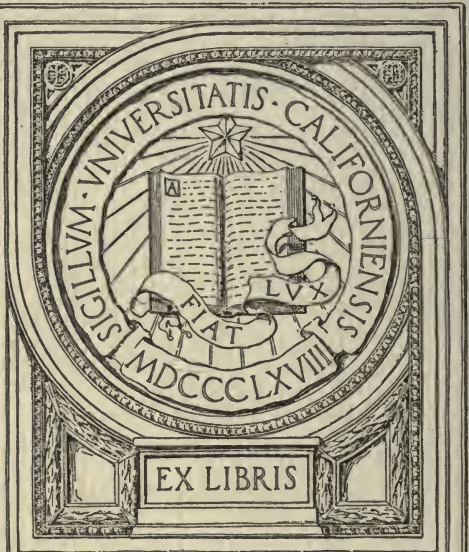

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with regard to the

ate Managed Workmen's Compensation Fund.

By G. H. Driggers, Secretary

Idaho Employers' Protective Service Bureau

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The Truth About Washington's State Managed Workmen's Compensation Fund.

An Address Before the Committees on Labor and Capital of the Montana State Legislature at Helena, February 6, 1913.

Mr. Chairman, Gentlemen of the Committees, and Gentlemen:

I THANK you for the privilege of appearing before you for the purpose of discussing Workmen's Compensation, and laws relating thereto. I trust that you will bear with me this evening for the reason that, on account of the work I have been doing for the past six weeks, and the enormous stress under which I have been working, I am well nigh worn out. The work to which I refer has been that of making an analytical and critical study of Workmen's Compensation and the laws relating thereto, and particularly the Workmen's Compensation Law of the State of Washington, and of making a thorough investigation of the practical operation of the Washington Act as it has been administered since October 1, 1911, in the State of Washington. I have been devoting especial attention to the Washington Act for the reason that three of the bills now pending before your Legislature are based upon the Washington idea.

In order that you may understand my viewpoint, I trust you will excuse the references that I shall make to myself in the course of my discussion of this subject: In the first place, I was born in poverty and have been reared in the School of Hard Knocks—am a self-made man. I make this statement for the reason that I want the representatives of labor on this committee to fully understand that I know all of your problems of life, know

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the motives that actuate you in your daily affairs, and sympathize with you in your efforts to better your condition and elevate your station in life.

At this point, I shall relate you a bit of my personal experience by way of illustration of the problems that you now have under consideration. As a boy, I owned my own horse, and resorted to horse-trading as a means of financial gain; and believe that I acquired a fair quantity of what is ordinarily called "common horse sense." I might say right here that the proper exercise of "common horse sense" is all that is necessary to enable you to arrive at a proper solution of the question that we now have under consideration. Some of you have doubtless swapped horses and will appreciate the statements that I am about to make. There are three methods of swapping horses: First, swapping unsight and unseen; second, swapping as they stand; third, swapping on a try-out, i. e., swapping after you have seen the other fellow's horse in action. I have swapped horses hundreds of times, and usually made money by the transactions; but I always relied upon the third method mentioned. I have seen many men swap horses upon the first and second propositions mentioned. In a trade of that kind, I always noticed that some one got "stung." You can readily see that this would be the case. Now, gentlemen, it appears to me that the proposition before you relative to this Workmen's Compensation matter is analogous to the proposition in a horse trade, and that, in a large measure, all of the propositions before you are stated in a form analogous to my horse trading propositions numbers one and two.

We have been riding and driving this old reliable Employers' Common Law Liability horse for a great many years. It is now said that this old family horse is well now worn out. The whole Montana family admits that this is true. We have concluded to make a swap and find ourselves bantered for a trade from several different sources. My clients do not swap horses in the middle of the stream. They swap horses only upon the third proposition mentioned, to wit, after having seen the other fellow's horse in action; therefore, when this proposition of swapping the old family horse, Employer's Common Law Liability, for this young colt called Workmen's Compensation had been made, my clients en-

gaged my services for the purpose of making an investigation, i. e., making some personal observations of the other fellow's horse in action.

In this matter, I represent the following Montana employers and their employes. The employers and the employes of each firm that I represent constitute a family all of whom are to be seriously affected by, and are vitally interested in, the proposition under discussion. The Montana firms that I represent are as follows, to wit: State Lumber Company, of Kalispell, Montana; Olson & Johnson Company, building contractors of Missoula, Montana; the Great Falls Builders' Association, consisting of seventy-five employers of Great Falls, Montana; Rynker-Winter Company, Gagnon & Co., and Western Ornamental Plaster Company, of Billings, Montana. I have stated that I represent these employers and their employes. I have made this statement in this form because I have not heard a single speaker who has heretofore appeared before this committee make the statement that he represented any one other than the employer and his interest. I have made my statement in this form for the reason that my clients are deeply interested in the prosperity, happiness, contentment and general welfare of their employes; in fact, the general welfare of the employes has always been the first consideration of my clients; therefore, when these employers had retained my services for the purpose of making this investigation, I was requested to investigate this proposition most carefully from the standpoint of our employes. Our employes were satisfied that I should perform this duty for them, and they are willing to accept my judgment with respect to this matter in the utmost good faith. Under these circumstances, my interest in that great body of employes engaged in the services of the above mentioned employers becomes paramount to every other interst that I may have in this matter, and my discussion of this question will be mainly from the standpoint of the general welfare of these employers.

There are two of these Workmen's Compensation colts offered us in exchange for our old, worn-out Employers' Common Law Liability horse. One is named Washington Workmen's Compensation Idea, and the other, the New Jersey Workmen's Compensation Idea. Each of three of these bills before the Legislature of

Montana contains a proposition to exchange the Employers' Common Law Liability system of Montana for the Workmen's Compensation Idea of Washington, a State-administered Workmen's Compensation insurance scheme. One of the bills before the Montana Legislature contains the proposition to exchange your Common Law Employers' Liability system for the New Jersey Workmen's Compensation Idea, a system wherein liability for Workmen's Compensation is placed directly upon the employer. I shall discuss these propositions in the order in which I have named them.

What I have seen and heard since I have been in attendance upon your committee hearings has convinced me that you are well aware of the fact that the propositions before you constitute the most important matter of legislation that you will ever have to decide. I believe that you are fully convinced that this matter is of the utmost importance, not alone to yourselves, but to your children and your children's children, your neighbor, your neighbor's children and your neighbor's children's children, to every Montana employer, his children and his children's children, to every Montana employe, his children and his children's children, and to society at large of the great and prosperous State of Montana for all time to come. I am convinced that you fully realize this fact because I have never seen a body of men gathered together for the purpose of discussing, considering and deciding any matter who have devoted themselves more assiduously to the subject matter of the discussion than you have done.

After having heard a number of these discussions, I had thought that there was little left to be said on the subject; however, as I have stated before, the failure of the speakers who preceded me to analyze this proposition fully from the standpoint of the welfare of the employe makes it desirable that you should have placed before you all of the facts bearing upon this question from this standpoint by one who is in possession of first-hand information as to the practical operation of the Washington Workmen's Compensation Act. A discussion of this question from this angle by one who possesses these facts is rendered most desirable because of the fact that these three propositions to exchange your Montana Common Law Employers' Liability system for the Wash-

ington Workmen's Compensation Idea comes from certain representatives of organized labor of the State of Montana, and it may be that those who are making these propositions do not fully appreciate the true meaning of the same. I believe that those who have made these propositions have done so with the very best intentions. I should not impugn their purposes and intentions, but I do believe that they are honestly mistaken in the conclusions that they have reached. I shall state the facts and submit the proof that leads me to conclude that these men do not fully understand the facts from which they have drawn their conclusions. If the proof that I shall submit should convince you that a mistake has been made and that a graver mistake is about to be made, the representatives of labor of this State are sufficiently intelligent, and have sufficient courage of conviction to withdraw the propositions that they have made, and that they will then be willing to meet the employers of the State of Montana on mutual ground and agree upon a proposition that will work even-handed justice to every employe and every employer and society at large in this State.

In beginning my discussion of the relative merits and demerits of the propositions before us, I for myself personally, for my clients, and for their employes shall admit that our old Common Law Employers' Liability system, under which the employe is permitted to recover damages of his employer on account of personal injuries sustained in the course of the employe's work, on the ground that the injury was sustained solely by reason of the negligence of the employer, is no longer suited to the industrial conditions of this State; and that we need a good, safe, sane, common sense, workable Workmen's Compensation law. The disastrous circumstances that have fallen under the observation of each and every one of us make it unnecessary for me to submit you any proof of this assertion. You have often seen, and I have often seen, this system work disaster, both to the employer and the employe; disaster entailed upon the employer by reason of the recovery of enormous verdicts, in rare cases, by injured employes whose injuries may have, or may not have, entitled them to the amount of the award by the jury; disaster entailed upon the employe in numerous cases, by reason of the granting of the

defendant's motion for non-suit, or by reason of the direction of a verdict by the court in favor of the defendant at the conclusion of the plaintiff's case, on the ground that the jury for which the employe sought to recover damages was sustained by reason of the negligence of a fellow servant, by reason of the employe's own negligence, or by reason of the ordinary risk inherent in the work being performed at the time of the injury—assumption of risk. These disasters to employes, occasioned by reason of the foregoing defenses of the employer in such cases, have been so grave as to cause these defenses to become known as "the unholy trinity." These disasters are the cause of our conviction that the good of all parties concerned demands that this system be supplanted by a Workmen's Compensation system which is said to be more humane and more equitable.

Now, let us define Workmen's Compensation. What is this popular new principle known as Workmen's Compensation, the sound of which is such sweet music in the public ear, and the advocacy of which has become such a luscious morsel in the mouths of idealists, paternalists, humanitarians and politicians, and the adoption of which some parties would lead us to believe will mark the dawning of the millennium. Pure Workmen's Compensation is accident insurance in the hazardous industries, provided by the employer in such industries for the benefit of his employes engaged therein who may be accidentally injured in the course of their employment. This means that each employer shall pay a definite and certain amount of compensation to each of his employes, or their dependents in the event of employe's death, who may be accidentally injured in the course of his employment, regardless of whose negligence or fault caused the injury. This proposition is somewhat surprising, but this is not all that this proposition means. It also means that the employer's defenses, heretofore referred to as "the holy trinity," (1) that the injury was caused by the negligence of a fellow servant; (2) that the employe's own negligence caused the injury; (3) and that the employe assumed the ordinary risk inherent in the business, are to be abolished. This proposition is startling. If adopted, it will be a radical departure from the established principles, theories and practices of past centuries in this country;

therefore, wisdom dictates that we proceed cautiously and prudently, lest in our effort to remedy existing evil conditions, we should stumble into a pitfall wherein our condition may be many times more deplorable than that from which we sought to escape.

Our national government and our State governments have been founded upon the great American principle of individualism. The American citizen has been taught, and has believed, that every man was justly entitled to all of the fruits of his honest toil; that so long as he labored honestly and did no wrong, he should reap the full harvest of his efforts; that, if he committed a wrong, he and he alone, should recompense the injured party for the damage sustained, and as a corollary to this principle, we find another equally important principle of our Americanism, i. e., that so long as a man did no wrong in the conduct of his business, he should be entitled to conduct that business in his own way.

The Murphy, Cutts and O'Shea bills contain principles and propose the establishment of practices in direct contravention of the principles and practices just mentioned. The principles contained in these three bills, when applied in actual practice, constitute a most effective first step on the way to completing State control and operation of industries—a condition for which no Commonwealth of this country is prepared.

It is true, as we have already admitted, that our present industrial condition makes it desirable for us to accept and adopt a new system of handling industrial accidents. Then good judgment dictates that we adopt that system in such a form that it will do least violence to our American principles in the process of transition from the old to the new order of things. No one will deny the fact that, if the ultimate result of the application of the principles of and the practices contemplated by these three bills reasonably tends to lead to State control and operation of industries, their adoption would do the greatest violence to our established ideals of government; and for this reason, should be shunned, provided there is any other means of accomplishing the desired result.

There is, in my opinion and in the opinion of the great majority of the able men who have studied this question, another more effective means whereby the objects sought to be obtained may

be accomplished in the most effective manner, and yet do little violence to the aforesaid established American ideals.

In view of these things, you must now fully realize that the matter under discussion is one of such magnitude that its proper solution should require statesmanship of no less calibre than the foundation of our government required; otherwise, we may all live to regret the day in which we accepted this new doctrine and attempted to formulate and establish a system for its practice. Yes, we may live to hear our children curse our stupidity, in the event that any mistake is made in solving this problem.

Having admitted the desirability and the wisdom of a radical change with respect to this matter, we then find these questions only in issue, to wit:

1. The FORM of the remedial law itself—whether it should be compulsory or elective.

2. The PLAN of its administration—whether it should be administered directly by the employer himself, or by a political board or commission and their subordinates. The form of the law and the plan of its administration should be such as to do the least violence to the time-honored principles of our government, and yet accomplish the desired end. The bills before your Legislature indicate that there are at least two radically different forms and plans of such radical legislation, i. e., the form and plan of the Minor Bill, which is based upon the New Jersey idea, and the form and plan of the three bills that I am discussing, and that are based on the Washington idea and are designed to establish State insurance of Workmen's Compensation.

As I have already stated, I shall discuss the desirability of the adoption of the form and plan of the Minor Bill, after having analyzed and criticised the form and plan of the three bills designed to establish State-administered insurance of Workmen's Compensation.

It is your sworn duty to select that form and plan of a law which the facts fairly prove will do the greatest good to the greatest number of the citizens of the State of Montana. I believe that you have the honesty of purpose and the courage of conviction to do your sworn duty. In my opinion, the best interest of the employer, the employe and society at large may be

served by your selection of that form and plan which may be most easily, most readily and most generally acceptable to those most vitally interested in this matter—the employer and the employe. That form and plan is most certainly the form and plan, as I have stated, that does the least violence to our established ideals of government and yet accomplishes the desired ends. Remember that you may successfully lead, but you canont successfully drive, the average independent American citizen. You know that, and I know that; therefore, you should beware of such an open, apparent and notorious pitfall in your honest effort to elevate your own condition in life. Let your good judgment be guided by experience. Let your conclusion be based upon the facts with respect to this matter, disclosed by experience up to date.

Now, let us see what those material facts are. Those facts must have been obtained from the experience in the practical operation of the Washington Workmen's Compensation Act since October 1, 1911. I have spent much time and energy in gathering these facts for your benefit, in order that you might be enabled to draw an intelligent conclusion in the selection of the form and plan of the bill that you will recommend.

In the first place, I find that the Washington Act is compulsory, rather than elective in form. The Washington Act has been defined as compulsory, mutual, monopolistic, State-administered insurance of Workmen's Compensation. Insurance is guaranteed protection against loss, upon certain conditions and within definite limitations. The Washington Act guarantees nothing. It neither insures anybody or anything; therefore, it is not insurance. The Washington Act is a sterile attempt to establish hybrid, State-administered life insurance and Workmen's Compensation scheme.

In the second place, I find that the Washington Act appropriates A's property to pay B's losses under the Act, without due process of law. This may be a sound principle, but it is not acceptable to the average independent American citizen. It may be that, in the exercise of its police power, the State may appropriate my property to pay your losses under certain conditions, but I do not believe that the conditions under this discussion are so interwoven with the public welfare that this principle should be applied in this case.

In the third place, I find that the Washington Act, by compulsion, deprives every interested party of his right to a trial of his cause by a jury of his peers. This proposition is monstrous! The Constitution of the United States, and of every State in this Union, guarantees that this right shall ever remain inviolate.

In the fourth place, I find by reading the schedule of compensation provided by the Washington Act, that the amount of the various awards bear no relation to the loss of earning capacity of the injured party. A skilled mechanic who has earned $200 per month, is entitled to no greater compensation than the section hand who has earned only $40 per month. In event of the death of these two employes, each of their widows would become entitled to receive the same amount of compensation—$20 per month. This is only one fair example of the extremely inequitable and inhumane provisions of this Act as to compensation provided in the schedule of benefits under this law. Your three bills that I am discussing contemplate the adoption of this schedule of compensation. You must not delude yourselves by believing that such an inequitable and inhumane schedule of benefits will be satisfactory to injured employes and their dependents for any very considerable length of time.

It is a further fact that the whole of this schedule of benefits has proven to be wholly unsatisfactory to the employes of the State of Washington. As proof of this assertion, I have but to refer you to the First Annual Report of the Industrial Insurance Department of the State of Washington, page 297, et seq., where you will find numerous recommendations as to amendments made by the Industrial Insurance Commissioners of that State. I have been informed, and believe the fact to be that these recommendations for amendments are the result of the pressure that has been brought to bear upon this commission by organized labor throughout the State of Washington.

In the fifth place, I find that, for the various reasons stated, grave and serious doubt exists as to the constitutionality of the Washington Act, which doubt entails an enormous burden and injustice upon the employer. Not only is the careful employer's property appropriated to pay the losses sustained on the works and in the plants of the negligent and careless employers, but in

addition to the amount appropriated from such careful employer, the serious doubt as to the constitutionality of the Act itself, and the extreme uncertainty of the permanency of the law compels every prudent employer to expend an additional amount, nearly equal to the amount appropriated from him by the State, in the purchase of an employers' liability policy of a casualty company.

The law itself is so framed that in event of its repeal at any subsequent session of the Legislature of the State of Washington, or in event of its being declared unconstitutional by any court, a stupendous amount of litigation over personal injury damages on account of injuries sustained during the period of the operation of the law will follow immediately. In numerous instances the volume of this litigation will be such that employers may be compelled to resort to bankruptcy courts in order to discharge their liabilities on this account, unless they have exercised the good judgment and foresight of providing themselves with such protection against such liability.

The injustice of this situation is most clearly demonstrated in the case of competing contractors who put in bids on large contracts for construction work within the State of Washington. The prudent man feels the necessity of adding the cost of such an employer's liability policy to the amount of his bid; and in addition to the amount that he has figured that the State of Washington will compel him to contribute to the Accident Fund in his class. His competitor may not be financially responsible, or may not be a prudent business man, and may, therefore, eliminate this item of cost, and thereby secure the contract which should have been awarded to the careful, prudent and financially responsible contractor. This is only one fair example selected from a list of hundreds of such cases of inequity and injustice that a jackpot State insurance scheme operates to produce.

From these findings of fact with respect to the form of the Washington Act, I have been forced to draw the following conclusions, to wit:

1. I am of the opinion that it is extremely doubtful whether the Supreme Court of the United States will hold this law, or any modified form thereof, to be constitutional. In this opinion, I agree with a great majority of the ablest lawyers of this country,

Judge Laffey, who is Chief Counsel for the Du Pont Powder Company, is one of these lawyers with whom I agree. At this time, Judge Laffey and his associates are defending an action brought by the State of Washington against the Du Pont Powder Company for the collection of approximately $9,000 on account of levied assessments, penalties and contributions to the Powder Mill Class of the Industrial Accident Fund, made necessary by reason of losses arising out of a disaster that occurred in another company's plant.

These contributions have been demanded of the Du Pont Powder Company, notwithstanding the fact that this disaster occurred by reason of no negligence or fault on the part of the Du Pont Powder Company, and notwithstanding the fact that the injured employes and the dependents of those who lost their lives in this disaster have not received the compensation provided by law. You will remember that I have already stated that the Washington Act does not insure anything or anybody. The Du Pont Powder Company is also defending an action brought against it on account of personal injury damages sustained by one of its employes who was injured in the course of his employement that came within the scope of the compensation law.

I am associated with the attorneys for the defendant in the case of F. E. Hinkley vs. the Phoenix Lumber Company. This is an action brought directly in the Federal Court by an injured employe who sustained injuries in the course of his employment that came within the scope of the Washington Act. Hinkley refused to accept compensation from the State and brought this action on the ground that, for the reason that I have stated, the Washington Act is unconstitutional. There are a great many other cases of the same kind now pending in the various courts of the State of Washington. Employers are being sued by their employes; employers are being sued by the State; and employes are suing the State. While the facts stated make a serious situation, yet, in my opinion, the trouble has only barely begun. This is a deplorable condition.

In view of the above stated facts and conditions, I do not believe that you will seriously contend that the form of the Washington Act, or any modified form thereof, would not do great

violence to the time-honored principles, theories and practices of our government. I do not believe that you will contend that a proposition to establish such a deplorable state of affairs in the State of Montana should be easily, readily and generally acceptable to employers, employes and society at large of this State.

2. Lest we may have overlooked some of the material facts in this case, it may be edifying to refer back to the Report of the Commission appointed by Hon. M. E. Hay, ex-Governor of the State of Washington, for the purpose of investigating this problem, and see what illuminating facts that report discloses. I submit the report itself, and you will observe that it consists of only five pages in this small pamphlet. That a law of this kind should have been enacted, when based upon such a meager and inadequate report, that shows upon its face utter lack of industry and intelligence in its preparation, is an enormous crime—when we consider its manifold ramifications and its far-reaching effects upon employes, employers and society at large.

This report is absolutely devoid of any adequate statement of the material facts upon which this law is based. But this report is pregnant with numerous misstatements of alleged facts that have been shown to be false by experience under the practical operation of the law. I will refer to two instances only, for the reason that these two propositions constitute the justification for the apporpriation from the General Fund of the State of Washington the sum of $150,000 to pay the expenses of the administration of this Act, which appropriation has proven to be grossly inadequate. This commission justified this proposition upon the following alleged facts, to wit:

> 1. That the practical operation of this Act would reduce expenses to the State and the several counties of the State by eliminating litigation over personal injury damages, to the extent of at least $100,000.
>
> 2. That the practical operation of this Act would relieve the various counties of the State from an enormous financial burden, entailed by reason of caring for injured workmen, their widows and children who became public charges on account of injuries sustained by these workmen in the course of their employment.

The fact is that this Act does not operate, and may not be expected to operate to reduce the above mentioned court expenses.

The fact is that employes injured in the course of their employment within the scope of this law, have been cast upon the various counties of the State of Washington in much greater numbers during the operation of this law than before its adoption.

These things being true, there is no reasonable justification for the appropriation of one single dollar of the taxpayers' money for the purpose of administering this Act. The consumer and taxpayer, by reason of the practical operation of this Act, pays an increased price for the manufactured product that he buys, or for the services that are rendered him, and also pays the expenses of the administration of the Act itself, by taxation upon his property. There is neither equity nor justice in such a proposition, nor may we reasonably expect the citizens, consumers and taxpayers of any State to be content to permit the continuance of such a scheme for any very considerable length of time. In fact, this element has already manifested itself.

3. This class of legislation should be permanent. Your bill should be so drawn that the practical operation thereof will accomplish great good. Let me repeat. Your bill should be drawn in such terms that it will be most easily, most readily and most generally acceptable to the employer, the employe and the citizenship of your State; for, if it is not so drawn, then it must fall, either by reason of being declared unconstitutional by the Supreme Court of your State, or of the United States, or by reason of its repeal by some subsequent session of your Legislature. And the fall of a law of this kind, by reason of the happening of either of the events that I have mentioned, would be a State-wide calamity. Now, you must agree with me that the above stated facts, and the conclusions drawn therefrom, are sufficient to force any reasonable, prudent man to concede this point, that your law should be elective, rather than compulsory in form—elective both as to employer and employe, if the desired purposes and objects of this class of remedial legislation is to become an accomplished fact.

The plan of administration of the Washington Act, and the plan of administration presented in the three bills that you have under consideration and that I am discussing, presents some facts that seem even more monstrous than the facts relating to the

form of the Washington Act. Let us see what these facts are:

1. I find that the Industrial Insurance Commission, charged with the administration of the Washington Act, consists of a political commission of three members; that the subordinates, numbering more than one hundred persons, are political appointees; that the members of this commission, as well as their subordinates, obtained their respective positions as a reward for political service rendered, or to be rendered, without regard to competency and experience in the particular work to be performed. The number of these subordinates may seem large; however, the fact is that the present number should be multiplied by ten, if the Act is to be administered in an efficient, economical and satisfactory manner.

You are an intelligent body of men; therefore, I do not need to call your attention to the danger to society at large of such a political organization administering such a big business that is so full of political opportunities. The least misuse of the power conferred upon this commission and its subordinates, under this Act, might easily wreck any Commonwealth of this country. In this connection, I want to add that neither the Washington Act nor the bills that I am discussing provide any adequate rules of limitation upon the conduct of such a political organization.

2. The history of the Washington Act shows that it was fathered by a ring of politicians, for the purpose of catching the votes of the Labor Party of the State of Washington. It was born of a political scheme, rather than humane intentions and purposes. I have yet to see any good thing emanate from such a source. This attempt to build a political machine upon this business proposition has been the downfall of one political party, and will result in the disruption and destruction of any political party that may attempt such an abortion.

Hundreds of the citizens of the State of Washington frankly tell men that this Act has been administered largely along political lines, even during the short time that it has been in force. This charge is very significant, and should constitute a grave warning to you. Under such conditions as I have already detailed to you, neither employer, employe nor society at large may reasonably expect fair, equitable and honest treatment.

3. Let us further examine the political phases of this proposition, particularly from the standpoint of the employer. I have been informed that before the passage of the Washington Act, a delegation of business men went to Olympia, Washington, and interviewed the politicians who were then advocating the passage of the bill relative to the cost of the compensation provided in the schedules of this law. I understand that these politicians told this delegation of business men that the cost in Class 10 (lumbering, milling, etc.), according to the statistics at hand, should not exceed the sum of $1.50 per $100 of the payroll in this class, which cost was the same as the casualty companies were then charging in this class for employers' liability policies. This satisfied these employers.

These politicains either did not know what the cost would be, or they misrepresented the fact to these employers. When seven monthly calls of assessments had been made on employers in Class 10 (lumbering, milling, etc.), the flat cost amounted to the sum of $1.46 per $100 of the payroll in this class. That was in May, 1912, several months prior to election time. The administration forces were vitally interested in the result of that election. Accidents were being reported in large numbers in this class. The administration forces could clearly see that the cost in this class must necessarily greatly exceed the amount that these politicians had said that it should be. Something had to be done to save the day. Should the fact become generally known that the cost in this class would be $2.50 per $100 of the payroll, and still leave a deficit in that fund, the political party then in power was doomed; therefore, further calls in this class were passed; settlments were deferred as far as possible. Necessary reserves were not made to mature accruing liabilities. The Industrial Insurance Commission books were closed on September 30, 1912, and the commission's report shows that at that time the fund in Class 10 contained only $590, and the flat cost had amounted to $1.46 per $100 of the payroll in that class, notwithstanding the fact as to the methods employed to make a "good showing."

Necessarily, the condition in this class was such that, immediately after election, it was imperative that the commission make several calls of assessments in this class, in quick succession, for

the purpose of retiring liabilities that accrued and should have properly been returned under the business for the year ending September 30, 1912. This fact was a rude surprise to every employer within that class, as well as to many other employers who were not interested in that class. The political party in power during the first year of the administration of this Act was also charged with the investment of the reserves segregated from the Accident Fund.

It is a strange coinicidence that the sum of $80,500—one-third of the total reserves made and invested from this Accident Fund —went into bonds of the cities and school districts of the Yakima Valley, the scene of the hottest political battle in the State.

One of the leading business men of the State of Washington, who is the manager of the biggest business in that State, has estimated that on September 30, 1912, there was in fact an enormous deficit, amounting to approximately $300,000, in the fund of Class 10. We should not lay these faults at the doors of the men charged with the administration of this law. The fault lies with the plan of administration of the law that makes this "probable" condition at all "possible."

4. Notwithstanding the political activities of the party then in power, represented by ex-Governor Hay, that party met its Waterloo at the last general election in the State of Washington, held in November, 1912. That administration has been succeeded by a Democratic administration. "To the victors belong the spoils." Mr. Hugh C. Todd, who is the Democratic State chairman, and other Democrats in influential positions, have issued an ultimatum wherein it is stated that a clean sweep of all administration officers and their subordinates is to be the rule. All of those who have any knowledge of the Washington Workmen's Compensation Act, or who have any experience in its administration, will be let out automatically. Their positions will be filled, no doubt, by inexperienced officials and subordinates.

Should your competitor and neighbor establish his business upon the above stated basis, what would you think of his business sagacity and judgment? Would you therefore conclude that the best thing for you to do would be to adopt his system because both of you were engaged in the same class of business, in the

same locality, and were subject to the same trade conditions? Would you do so on any consideration whatsoever? I believe not, for the reason that no prudent man would expect efficient, economical and satisfactory service under such a system.

5. Let us see who contributed to the defeat of the political party that fathered the Washington Workmen's Compensation Act, and under whose administration it was put into operation. In a lengthy article published in the Seattle "Post-Intelligencer" on January 14, 1913, ex-Governor Hay admitted, over his own signature, that he was advised of one instance in which fifteen big employers of the State gave $500 each for the purpose of defeating him on account of the egregious blunder that he had made in connection with the Washington Workmen's Compensation Act. If these fifteen employers mentioned by ex-Governor Hay are known to have taken such an interest in this matter, what were the other dissatisfied employers doing? And those other dissatisfied employers constitute quite an army. There is a difference between "telling the truth" and "telling the WHOLE truth." Why did not Mr. Hay make a full confession and tell us about the united opposition of several of the large labor organizations in the State of Washington, and state the amounts expended by them in his defeat? Should he have done so, he would have stated the proposition fairly, so that the whole world might have known what the true attitude of both employers and employes in the State of Washington is with respect to the form of the Washington Act and the plan of its administration.

You will remember that in the beginning I stated that my treatment of this subject would be largely from the standpoint of the employer. The Washington Act works great injustice to the employe, one element of which injustice I have already illustrated. The compensation awards are improperly and indequately arranged, i. e., the law promises sure and speedy relief, but injured persons have to wait sixty to ninety days, and longer, for any relief at all.

At the time of the injury, when relief is imperative, the claimant receives only long technical reports to be filled out and forwarded to the commission. The commission handles the investigation and awards by correspondence. The employer, employe

and surgeon must do the work while the commission boasts of its small percentage of expense for the administration of the law. The following is the prescribed routine before claims are honored for settlement:

I. Filing of
1. Workmen's Claim for Compensation (Form 22).
2. Employers' Report of Accident (Form 21).
3. Report of Attending Physician (Form 23).
4. Report of Witnesses, if any (Form 28).

II.
1. Scrutiny of Claims by (a) Claim Agent, and (b) Chief Medical Advisor.
2. Procuring of Form 27 or Form 36.
3. Summary and Estimate of Claim.
4. Submission to Commission.

III.
1. Adjudication by Commission.
2. Issuing of Voucher by Claim Agent.
3. Checking on Minutes.
4. Return of Voucher and Issuance of Cash Warrant.

The prosecution of a claim by an injured employe, or his dependents, under this system, is almost as tedious a matter as the prosecution of a soldier's pension claim before the United States Pension Office. The prosecution of a claim before such an Industrial Accident Commission would be like taking a course in a correspondence school.

Fearing that some of you may still be in doubt as to whether or not the Washington Act is in fact wholly unsatisfactory to every intelligent employe, I desire to read a statement printed in the "Evening Telegram," published in Portland, Oregon, on January 14, 1913, which statement is signed by thirty-one business agents and delegates to the Building Trades Council of Portland, Oregon, which business agents and delegates represented thirty-one of the largest labor unions in the State of Oregon in an indignation meeting caled for the purpose of protesting against the passage of a Workmen's Compenstaion bill based upon the Washington Act, said bill being a duplicate of one of the three bills before the Montana Legislature, which bills we now have under discussion.

By way of explanation, I will say that the State of Washington is separated from the State of Oregon for a distance of more than three hundred miles by the Columbia River only. Employes

in the State of Oregon frequently go up into the State of Washington and work in the industries that come within the scope of the Washington Act. These employes have friends and relatives who reside in all parts of the State of Washington, and who earn their daily bread selling their labor to employers whose businesses come within the scope of the Washington Act. No one will deny the fact that the business agents and delegates who signed the statement that I am about to read to you know very nearly all about the practical operation of the Washington Act from the standpoint of the employe. These business agents and delegates say:

> The employers, now, in the construction of large buildings in Oregon, plank the floors as they go up, and if a man working on the tenth or fifteenth floor falls, he only has a few feet to drop. Did they do that before the present Employers' Liability Law? They did not. Do they do so in Washington, where they have this Act? They do not. On the Smith building, now being constructed in Seattle, the same being over twenty stories high, nothing above but blue sky and nothing below—twenty-thirty-forty stories—except death on the hard ground, hundreds of feet below, with only a narrow girder to walk or work on, and a large crane swinging heavy steel girders over your head, which the workman must catch and help put in place. This is all the protection to life and limb that the Washington Workmen's Compensation Law gives the poor iron workers. We do not want this kind of compensation. We want protection for ourselves, and we will keep our families.
>
> Hundreds of other instances of this same character may be cited in the hazardous trades in the State of Washington.
>
> In Oregon as soon as a man is hurt, he is at once rushed to the hospital and the best medical aid that can be obtained is furnished. This the corporation pays for, regardless of whether or not the man sues, as it is better to give the man humane and just treatment, with a better chance of a settlement of claim out of court.
>
> From May 20, 1911, to September 30, 1912, there were 5,179 accidents, with 164 deaths reported in Oregon. This is a record for fifteen months under our present law, as against the Compensation Law in Washington, with 13,000 accidents in twelve months, almost two-thirds more accidents in Washington under Compensation than in Oregon under present law, or a total of 7,821 more accidents in Washington in one year than in Oregon in fifteen months.
>
> If there are any humanitarian principles in the proposed Compensation Act, we have failed, up to this time, to find one lone clause in said Compensation Act which looks humane to us. We do not want cripples and parts of men to the difference of over

7,821 per year, at any rate of compensation. Under the Washington Act, employers do not safeguard their employes, and therefore, accidents are not lessened, but on the contrary, are increased three-fold, because the employer can accomplish a considerable more work and at a much less cost, by eliminating these precautionary measures, and he only pays a certain amount to the Fund. If he kills or malms a few more workmen, why there will be plenty of others to take their place, and the work goes on much faster. What does such a Compensation Act mean to us? It means to us who work under these conditions, loss of life, it means broken backs, amputated arms and legs, and other injuries too numerous to mention; and what about our wives and families?

I contend that this proof is clear, strong and convincing. I contend that I need not submit any further proof to you, as reasonable men, that the Washington Workmen's Compensation Act, or any modified form thereof, will be wholly unsatisfactory to both employers and employes. You should not delude yourselves by believing that the plan of your three bills that I am discussing —all of which are based upon the Washington Act—may operate any more satisfactorily than does the Washington Act itself; therefore, these three bills are wholly undesirable and deserve the condemnation of each and every member of these committees.

In view of the facts that I have stated in connection with the three propositions of exchanging the Employers' Common Law Liability system of Montana for the Workmen's Compensation idea of Washington, I am convinced that your are willing to conclude with me that such an exchange is wholly undesirable. But what about the proposition of exchanging our worn-out Employers' Liability system for the New Jersey Workmen's Compensation idea?

Is it even desirable that we should accept that proposition at this time? That proposition is the only one left, after having eliminated the three propositions heretofore named. In passing, I might mention the fact that the New Jersey Act was fathered by President-elect Woodrow Wilson, of New Jersey. That Act is the fruit of his long, patient study of this subject, and is his best judgment with respect to this matter.

In order that you may appreciate the standard by which I have measured the three propositions that I have discussed, and fully understand the conclusions that I have reached with respect

to them, I shall now state what I consider to be, and what every author on this subject considers to be, the primary basic principles of every Workmen's Compensation law that is in force, and that is operating satisfactorily from the standpoint of employer, employe and society at large. These basic principles are as follows, to wit:

First: That such a law should operate to do PROMPT, average justice.

Second: That it should operate to prevent accidents.

I will say that, as incidents to these propositions, the practical application of these basic principles should accomplish the following very desirable objects, to wit:

1. Eliminate litigation over personal injury damages, and thereby rid society of the "ambulance chaser," the "shyster" and the contingent fee doctor—all of whom are parasites.

2. Put PROMPTLY into the pockets of the injured employe, or his dependents in the event of his death, reasonable compensation for the loss sustained, without any diminution in transit.

3. Give the injured employe immediate, efficient medical attention as and when the same is needed.

4. Eliminate strife and dissension between the employer and his employes, and cement a bond of good feeling between them.

5. Effectively eliminate State and county expenses in the shape of court costs incident to this class of litigation, and county expenses incident to the care of injured employes and their dependents who have heretofore become public charges. These very desirable objects have not been accomplished under the Washington Act, and we may not expect them to be accomplished under any modified form and plan of the Washington Act, as has been shown by the records of the courts and county hospitals of the State of Washington for the period beginning October 1, 1911, and ended January 1, 1913.

6. Effect the most efficient and the most economical administration of the law.

The facts that I have submitted constitute clear, strong and convincing proof that State-administered insurance of Workmen's Compensation as attempted under the Washington Act, and as is contemplated in three of your bills, is an absolute failure in this country. History shows that it has been a failure in every foreign country that has adopted this system. It is a failure from an economic, politic and social standpoint, because it is socially,

politically, morally, economically and legally unsound in principle and practice.

I have measured the Minor Bill, which is based upon the New Jersey idea, by the same standard, and find that it contains full measure according to the standard that I have outlined, except that it is compulsory in form, instead of elective. It should be made elective, both as to employers and employes. I, for myself personally and for my clients, insist that you make it elective in form, if you conclude to recommend its adoption. Should you in your wisdom conclude to recommend its adoption, you will be following in the footsteps of the legislation of fourteen of our sister States, wherein such laws have been passed and have become effective. You will be following in the footsteps of the commissions appointed by Governors of the States of New York, Minnesota and Missouri—all of which commissions, after an expensive and thorough investigation of this question, concluded that the facts disclosed by the practical operation of the Workmen's Compensation Law of the State of New Jersey proved beyond any reasonable doubt that the New Jersey idea is by far the most desirable idea.

The Workmen's Compensation Law of the State of New Jersey is not found wanting in any particular when measured by the standard by which I have measured the Washington Act. It removes the bone of contention between the employer and the employe as to the amount to be paid in case of accidental injury, by fixing that amount by law. It places the liability for compensation directly upon each individual employer, thereby increasing the vigilance on his part to prevent accidents. If accidents do not occur, the employer will not have to pay compensation. Experience has shown that every employer's watchfulness to prevent accidents is increased in direct proportion to his direct liability. This fact is admitted by the Industrial Insurance Commission of the State of Washington on page 299 of the commission's first annual report, where we find this recommendation for amendment, to wit: "First Aid, 14 (A)—That the employer in whose plant an accident occurs shall be liabile for the treatment cost of such injury in an amount not to exceed $100 the intent of such provision being to supply an injured workman immediate and

competent first-aid, and to operate in reducing preventable accidents."

If a direct liability in the sum of $100 will operate to accomplish this result, what may we reasonably expect when the whole liability for compensation is placed directly upon each individual employer? I heard the one single employer who has addressed these committees, and who has advocated a jackpot State insurance scheme, say that accident prevention was a very secondary consideration in this matter. I believe he is mistaken. Every employer who has appeared before you has emphasized the point of accident prevention. Every author who has written on this subject has agreed that accident prevention is probably the very most important point in this matter; and that it may be successfully accomplished in one way only, i. e., by placing the whole liability for compensation directly upon each individual employer.

If all of our legislators were proposing Workmen's Compensation laws that embodied this system, we should not have any large bodies of intelligent, honest and courageous employes convening in an indignation meeting for the purpose of remonstrating against this class of proposed legislation. If the Washington Act embodied the fundamental principles that I have named, you would not hear me raising my voice in depicting the deplorable conditions, pernicious practices and monstrous tragedies existing and being enacted at this time in the State of Washington, under the practical operation of her Workmen's Compensation Act. For the system that I have outlined as desirable operates to do prompt average justice and to prevent accidents; and fully accomplishes all of the enumerated incidents that I have heretofore mentioned in connection with my statement of the fundamental basic principles of every good Workmen's Compensation law.

When your Minor Bill has been made elective in form, it will operate in the same manner as the New Jersey Act, and accomplish all of the desirable objects and purposes of that act; therefore, it is the only proposition that you have submitted to you that is desirable.

Every employer within the State of New Jersey whose operations come within the scope of this Act, with the exception of three employers, has elected to accept the compensation provisions

of that law. Every employer in that State who does not feel that he is financially able to carry his own risk, purchases a Workmen's Compensation policy of a reliable casualty company for the benefit of his employes; retires his liabilities on account of Workmen's Compensation from year to year, and does not have to worry for fear that the Act may be declared unconstitutional by any court, or that it may be repealed and thereby force him into bankruptcy by reason of an enormous volume of personal injury damage claims and suits. This accident insurance for the benefit of his employes is procured at a reasonable cost, rated upon the hazard of his risk, and its practical administration is eminently satisfactory to all parties concerned. It is satisfactory to the employer because its cost from year to year is definite. It is satisfactory to the employe because he receives prompt, fair and equitable compensation, based upon a reasonable percentage of his loss of earning capacity. His compensation is absolutely certain. In consideration for this treatment, and in consideration for the abrogation of his employer's common law defenses, he is satisfied and willing to accept approximately the sum of 50 per centum or his loss of wages for the periods limited by law in the various classes of injuries.

Let me emphasize the fact that the cost to the employer is such that the employe must be willing to share a fair portion of the burden if the employer is to be able to pay the compensation and still continue to operate his business. If the burden should be made so heavy that the employer cannot operate his business except at a loss, then there will be no employment, and, therefore, no necessity for compensation to injured employes. In this connection, I might state that one large industry furnishing employment to several hundred men in the State of Washington was offered for sale on account of the passage of the Washington Act; that an eastern buyer was secured who was willing to buy the business at a figure representing the investment of approximately $500,000.00 and continue to operate the plant; but that upon investigating labor laws, he discovered the Washington Workmen's Compensation Act and promptly refused to negotiate further for the purchase of this business, or any other business located in any of the States of the Northwest, saying

that his reason for so doing was the fact that the northwestern Sates are passing through a period of "fads and fancies" in labor legislation, and that he and his associates would not come into any of these States. The States of Montana and Idaho should take advantage of this situation and enact, safe, sane, workable Workmen's Compensation laws that will invite capital to develop your wonderful resources, establish new industries, multiply your payrolls and increase your prosperity.

The employer to whom I have heretofore referred, who addressed you and advocated the passage of a law, based upon the Washington Act, and who foolishly stated that accident prevention is a matter of little importance, also dragged an entirely disinterested party and an entirely immaterial matter into this discussion, i. e., the casualty company and its Employers' Liability policy. In this connection, he made some misstatements of facts that warrant me in making an explanation in order that there may be no misunderstanding. I am unable to design his purpose in so doing, unless, perhaps he did so for the purpose of appealing to such low motives as Bias and Prejudice, which motives are illusory and unreliable for the reason that judgment based upon these motives is usually wrong. I am certain that these motives will not be premitted by such intelligent men as yourselves to enter into or form a part of the basis of your judgment in this case.

Now, a Workmen's Compensation policy is practically the same as the Workmen's Collective policy that has been written by the casualty companies for a number of years. Whenever I have seen the Accident Department of an industrial business administered under a Workmen's Collective policy, I have noticed that all of the desirable objects and purposes, contemplated in your Workmen's Compensation laws, have been an accomplished fact. Every employer who has procured such a policy for the benefit of his employes and has operated his business thereunder, will verify this statement. Workmen's collective policies and Workmen's Compensation policies differ from Employers' Liability policies as the day differs from the night.

I am now speaking from actual knowledge of these matters, gained from several years' experience in the administration of

the affairs of the accident departments for a number of large employers in Washington, Idaho and Montana. Workmen's Collective policies, provided by the employer, for the benefit of his employes and administered directly by the employer, or by myself as his Claim Agent or Attorney, have always produced happiness, contentment and satisfaction amongst our employes; has entirely eliminated lawsuits and antagonism between employe and employer; and has cemented a bond of general good feeling between these employes and their employers.

A workmen's compensation policy, written by a casualty company under a workmen's compensation law, may be expected to accomplish the same result in a much higher degree. What more could one desire? But let me reassert and emphasize the fact that this condition cannot be produced through the medium of State administered insurance of Workmen's Compensation, under which system a political machine is thrust directly between the employe and his employer. Let us not deceive ourselves with respect to this important matter.

It is a fact that the New Jersey Act has operated so that in less than one per cent of the cases wherein an injured employe or his dependent is entitled to compensation does the case find its way into the courts. The bone of contention between the employer and the employe has been removed, therefore, there is little excuse for litigation. Formerly New Jersey employers did the same as Montana employers, i. e., they purchased Employers' Liability policies of the casualty companies. The Employers' Liability policy is written exclusively in the interest of the employer.

The casualty companies are not to blame for this existing evil condition, which we have already agreed should be abolished. The fault is that of the law and the practice thereunder. Every casualty company in America agrees with us that the fault lies in the system, and they also agree with us that the system should be changed by a law, the form and plan of which is fair and equitable, and the practical operation of which will accomplish the greatest good to the greatest number.

I was living in the State of Washington when this Act was born. I have watched its wild, mad career ever since. I have seen the pernicious practices that I have detailed—yes, I have

seen tragedies enacted under it. Let me illustrate: I know an illiterate foreign employe who was injured last year while in the course of his employment in an occupation that comes within the scope of the Washington Act. Now, his case was an ordinary case, and went the usual routine. He had little money and few friends. His injury confined him to his room for a long time. He immediately enrolled in the Washington Industrial Insurance Commission's Correspondence School in his attempt to prosecute his own claim for compensation. In passing, I might add that the presentment and prosecution of such claims by educated and intelligent parties who may represent injured employes, has, for some unknown reason, been frowned upon and an order issued by this Commission forbidding this practice.

In this man's case, days passed by, weeks lapsed into months—long, long months. As the pangs of hunger gnawed at his vitals, and as his body was racked by pain and suffering, in his agony he began to meditate, and in these dreary hours of meditation, he began to make a mental picture of the Washington Industrial Insurance Commission's office. Being somewhat an artist, he then took his pencil and transferred this mental picture, bit by bit, to a piece of wrapping paper. The marvelous result is a work of art. I named it, "One Way To Run A Big Business."

This sketch partically shows three sides of a typically pretentious government building that is labeled the "'Washington Industrial Insurance Office." The top of this building may also be seen, and on the top we observe a large funnel leading into this building, and this funnel is surrounded by an army of employers and taxpayers who are industriously shoveling cash into this hopper. On the left may be seen an approaching army of lean, inexperienced incoming politcial appointees to take up the duties of the administration of the affairs of this office. On the right, we behold the army of sleek, well-groomed, though disconsolate, retiring political appointees, whose fate has been determined by the voters at the polls. In the foreground may be seen an army of poor, pitiable cripples and orphans and widows passing out from this mill. They, too, appear disappointed, downhearted, disconsolate and sad—in a measure, that beggars description—they are those who, after having written and written and

written to the officials of this office, pleading for immediate relief and prompt assistance, have gone in person, at great expense and inconvenience to themselves, to ascertain the cause

of delay, and if possible, to obtain the benefits to which they are entitled under the law, or at least, hasten the rendition of the commission's final judgment of award.

Now, this is a pathetic story, and the scene that I have depicted is a touching picture of actual life; but the real conclusion of this story is reached when this poor, illiterate, though intelligent and gifted foreigner, who had lost practically the entire sight of one eye as the result of the injury mentioned, was eventually tendered a voucher in the sum of $35.75, intended to be full and final payment of his claim, and was asked to sign an acquittance to the State of Washington, ackowledging payment in full for the injury sustained by him.

But that is not all, for, fortunately, he did not accept the voucher and execute the release, but upon the counsel and ad-

vice of a friend, made inquiry of this commission as to whether he was not entitled to greater compensation for such an injury. Considerable pressure has to be brought to bear upon this commission, in order that this man might receive a fair amount of compensation to which he was justly entitled without delay. The sum finally agreed upon was that of $750.00. Now, that picture represents the enactment of a monstrous tragedy, the like of which is no doubt being enacted daily in the practical operation of the Washington Ast, as administered by a political board, not governed by adequate rules of limitation, and surrounded by conditions that make it desirable to make a "good showing."

This is the case of Dominic Morelli vs. Industrial Insurance Commission of the State of Washington.

Now, I have heard Mr. Donahue, the Labor Leader on this floor, say that he, for himself and for his party, is willing to concede practically everything in the matter of mere detail in the Murphy Bill, which is a duplicate of the Washington Act, except that the scale of awards has been increased by fifty per centum, but that they will not concede the PRINCIPLE. That is the exact position of every labor leader from the National Federation of Labor leaders down. That principle is that of idealism, paternalism and socialism engrafted upon a political system unfit for its administration; and its adoption means wreck and ruin. The rank and file of common labor entitled to benefits under such an act, is not so much interested in the matter of the principle as in the matter of the practice under whatever system you may adopt. The common laborer is intensely interested in this point, and is willing to concede the objectionable principle and the pernicious practices entailed by its adoption, if he be given a system, the administration of which results in prompt, fair and equitable justice and forces his employer to be extremely careful of the life and limb of his employes. I have submitted the clearest, the strongest and the most convincing proof of this fact.

In conclusion, I desire to state for myself personally, for my clients who are employers, and for their employes, that we are unalterably oposed to every plan of State administered insurance of Workmen's Compensation on account of the deplorable facts

that my investigation has disclosed with respect to the operation of such laws, and for the reason that we firmly believe such laws to be inimical to the general welfare of employers, employes and society at large. For myself personally, for my clients and for their employes, I shall say that we are heartily in favor of a Workmen's Compensation law in substantially the form and plan of the Workmen's Compensation Law of the State of New Jersey, for the reason that such a law will be a desirable and permanent piece of remedial legislation, and that its practical operation will be an inestimable benefit to all parties concerned. In the interest of the citizenship of the great and prosperous State of Montana, I appeal to you at this time to let your verdict in this all-important matter be based upon good judgment. Recommend a safe, sane, workable Workmen's Compensation bill that may become a law, and it will stand as a memorial to your wise judgment.

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